

120 FERC ¶ 61,078
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Texxon Utilities, Ltd. Co.

Docket Nos. ER03-1150-000
ER03-1150-002
EL07-51-000

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS AND
TERMINATING SECTION 206 PROCEEDING

(Issued July 20, 2007)

1. In this order, the Commission accepts the updated market power analysis filed by Texxon Utilities, Ltd. Co. (Texxon) in response to the Commission order issued on April 25, 2007.¹ In addition, this order terminates the section 206 proceeding instituted in Docket No. EL07-51-000 with regard to Texxon.

Background

2. In the April 25 Order, the Commission directed Texxon to file its updated market analysis within 60 days from the issuance of that order or to provide satisfactory support for why it should not be required to do so. The Commission also established a refund effective date under section 206 of the Federal Power Act (FPA) for the protection of customers.²

3. Texxon filed a timely updated market power analysis in response to the April 25 Order.³ We herein accept Texxon's updated market power analysis and terminate the

¹ *Texxon Utilities, Ltd. Co.*, 119 FERC ¶ 61,085 (2007) (April 25 Order).

² 16 U.S.C. § 824e (2000).

³ We note that the Commission has recently revised and codified in the Commission's regulations the standards pertaining to market-based rates. *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 (2007). Given that Texxon filed its updated market power analysis prior to the effective date of Order No. 697, the Commission will examine the filing based on the market-based rate analysis in effect at that time. However, Texxon is reminded that it will be subject to the requirements of Order No. 697 upon the effective date of Order No. 697.

section 206 proceeding instituted in Docket No. EL07-51-000 with regard to Texxon, as discussed below.

Updated Market Power Analysis

4. On June 22, 2007, Texxon filed an updated market power analysis.⁴ Texxon states that it is a Texas LLP with its principal place of business in Waxahachie, Texas. Texxon states it has no corporate affiliations. Texxon states that it is a power marketer that will purchase and resell electricity to wholesale customers. Texxon states that it does not own or control any interests in generation or transmission facilities. Texxon also states that it cannot erect barriers to entry. Lastly, Texxon states that it has no franchised service territory.

Notice of Filings

5. Notice of Texxon's filing was published in the *Federal Register*, 72 Fed. Reg. 36,445 (2007), with interventions or protests due on or before July 13, 2007. None was filed.

Discussion

6. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission, and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁵ As discussed below, the Commission concludes that Texxon satisfies the Commission's standards for market-based rate authority.

7. On April 14, 2004, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.⁶ Texxon states that it does not own or control generation facilities and that it is not affiliated with an entity that has generation assets. Based on Texxon's representations, the Commission finds that Texxon satisfies the Commission's generation market power standard for the grant of market-based rate authority.

⁴ Texxon filed a notice of succession on June 20, 2007, to change its name from Texxon to Texzon Utilities Ltd. That filing will be acted on in a separate proceeding.

⁵ See, e.g., *Progress Power Mktg., Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Mktg. Co.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

⁶ *AEP Power Mktg., Inc.*, 107 FERC ¶ 61,018, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

8. Texxon states that it does not own or control transmission facilities. Accordingly, we find that, based on Texxon's representations, Texxon satisfies the Commission's transmission market power standard.

9. Texxon states that it cannot erect barriers to entry into wholesale power markets. Texxon states that it does not own or control sites for new generating capacity, natural gas transportation facilities, or any other essential resources or inputs that could be used to restrict market entry by competing suppliers. Based on the representations of Texxon, the Commission is satisfied that Texxon cannot erect barriers to entry.

10. The Commission is concerned with the potential for affiliate abuse and reciprocal dealing. Texxon states that it has no franchised service territory. Additionally, Texxon's tariff prohibits sales to any affiliate with a franchised service territory without first receiving Commission authorization. Based on the representations of Texxon, we find that Texxon satisfies the Commission's concerns with regard to affiliate abuse.

11. We find that Texxon satisfies the Commission's directive in the April 25 Order and meets the requirements for continued market-based rate authorization. We will therefore terminate the section 206 proceeding instituted in Docket No. EL07-51-000 with regard to Texxon.

12. Texxon is directed to file an updated market power analysis pursuant to the regional schedule adopted in Order No. 697.⁷ The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Texxon's updated market power analysis is accepted for filing, as discussed in the body of this order.

⁷ To the extent that Texxon believes it falls within the newly established definition of "Category 1" sellers that will not be required to submit regularly scheduled updated market power analyses, it must make a filing with the Commission at the time that an updated market power analysis for its relevant market would otherwise be due based on the regional schedule for updated market power analyses adopted in Order No. 697. As the Commission explained in Order No. 697, that filing should explain why the seller meets the Category 1 criteria and should include a list of all generation assets (including nameplate or seasonal capacity amounts) owned or controlled by the seller and its affiliates grouped by balancing authority area. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 849.

(B) The section 206 proceeding instituted in Docket No. EL07-51-000 is hereby terminated with regard to Texxon, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.